

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: Charles E. BERNASCONI, et al.
Title: NOTIFICATION OF
EMPLOYEES VIA PASS CODE
ACCESSED WEB PAGES
Appl. No.: 09/641,866
Filing Date: 08/18/2000
Examiner: RAPILLO, Kristine K.
Art Unit: 3626
Confirmation Number: 7547

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
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Sir:

Under the provisions of 37 C.F.R. § 41.37, this Appeal Brief is being filed together with a credit card payment form in the amount of \$540.00 covering the 37 C.F.R. 41.20(b)(2) appeal fee. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 19-0741.

1. Real Parties in Interest

The real party in interest is the assignee of record, Frontline Placement Technologies, Inc.

2. Related Appeals and Interferences

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to appellant, the assignees, or appellant's patent representative. Because there are no related appeals or interferences, there is no Related Proceedings Appendix.

3. Status of Claims

The present appeal is directed to claims 89-92, 98-110, 113-114, 121-146, i.e., all of the presently pending claims in this application, all of which were rejected in the final rejection of August 3, 2010.

Claims 1-88	Canceled
Claims 89-92	Rejected
Claims 93-97	Canceled
Claims 98-110	Rejected
Claims 111-112	Canceled
Claims 113-114	Rejected
Claims 115-120	Canceled
Claims 121-146	Rejected

4. Status of the Amendments

An amendment filed after Final Rejection to remove a section 112 matter raised for the first time on final rejection was filed on October 19, 2010. This amendment was entered by the Office Action dated November 8, 2010. **This Office Action states in paragraph 13 that the rejection of the claims under 35 USC 112 has been overcome.**

5. Summary of Claimed Subject Matter

GROUP 1 INDEPENDENT CLAIMS:

123. A system comprising:

one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers; **[[Basis at least at page 1, lines 9-13; page 5, lines 8-16; page 12, lines 12-13; page 16, line 19; page 18, lines 1-6; page 17, lines 12-15; page 19, line 9-16.]]**

one or more computers configured for filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified; **[[Basis at least at page 5, lines 5-16; page 6, line 1; page 9, lines 1-3; page 15, lines 10-11; page 16, lines 10-20; page 18, line 3-10; page 20, lines 1-2; and the Figure.]]**

the one or more computers configured for serving a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving comprising

serving information on one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases; **[[Basis at least at page 5, lines 1-17; page 6, lines 1-4 and 8-9; page 8, lines 9-10 and 14-16; page 9, lines 1-8 and 15-18; page 10, lines 14-16; page 12, line 3 – page 14, line 19; page 16, lines 16-19; page 17, lines 12-18; page 18, lines 1-8 and 13-15; and the Figure.]]**

the one or more computers configured for obtaining information about a new open position; **[[Basis at least page 6, line 5; page 8, line 1; page 15, lines 3-14; and the Figure.]]**

the one or more computers configured for obtaining information about one or more of the workers that are preferred (“a preferred worker”) for the new open position; **[[Basis at least at page 6, line 7-8 and 10-12; page 8, lines 1-2; page 16, lines 13; page 19, lines 18-19; and the Figure.]]**

the one or more computers configured for updating electronically the information in the one or more databases to include information on the new open position; **[[Basis at least at page 7, lines 6-11; page 19, lines 9-13; page 8, lines 9-10; page 15, lines 3-15; and the Figure.]]**

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic

requests by or for the one or more preferred workers; **[[Basis at least at page 6, lines 10-14; page 16, lines 1-2 and 10-16; page 18, lines 13-17; and the Figure.]]**

the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers; **[[Basis at least at page 9, lines 2-3; page 10, lines 13-14; page 12, lines 6-11, page 13, lines 5-10, page 16, lines 1-2 and 17-19 and page 18, lines 1-3; and the Figure.]]**

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position; **[[Basis as least at page 16, lines 1-2 and line 17 – page 17, line 3; page 18, lines 10-13; and the Figure.]]**

the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

[[Basis at least at page 6, lines 12-16; page 9, lines 2-3; page 10, lines 13-14; page 12, lines 6-11, page 13, lines 5-10, page 16, lines 16-19, page 20, lines 3-5; and the Figure.]]

the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker. **[[Basis at least at page 16, line 17 – page 17, line 3; page 18, lines 10-13; and the Figure.]]**

132. A method, comprising:

accessing one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers;

[[Basis at least at page 1, lines 9-13; page 5, lines 8-16; page 12, lines 12-13; page 16, line 19; page 18, lines 1-6; page 17, lines 12-15; page 19, line 9-16; and the Figure.]]

filtering, by one or more computers, to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified; **[[Basis at least at page 5, lines 5-16; page 6, line 1; page 9, lines 1-3; page 15, lines 10-11; page 16, lines 10-20; page 18, line 3-10; page 20, lines 1-2; and the Figure.]]**

serving, by the one or more computers, a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving information on comprising

serving one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases; **[[Basis at least at page 5, lines 1-17; page 6, lines 1-4 and 8-9; page 8, lines 9-10 and 14-16; page 9, lines 1-8 and 15-18; page 10, lines 14-16; page 12, line 3 – page 14, line 19; page 16, lines 16-19; page 17, lines 12-18; page 18, lines 1-8 and 13-15; and the Figure.]]**

obtaining information about a new open position; **[[Basis at least page 6, line 5; page 8, line 1; page 15, lines 3-14; and the Figure.]]**

obtaining information about one or more of the workers that are preferred (“a preferred worker”) for the new open position; **[[Basis at least at page 6, line 7-8 and 10-12; page 8, lines 1-2; page 16, lines 13; page 19, lines 18-19; and the Figure.]]**

notifying, by the one or more computers, the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers; **[[Basis at least at page 6, lines 10-14; page 16, lines 1-2 and 10-16; page 18, lines 13-17; and the Figure.]]**

serving, by the one or more computers, the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers; **[[Basis at least at page 9, lines 2-3; page 10, lines 13-14; page 12, lines 6-11; page 13, lines 5-10; page 16, lines 1-2 and 17-19 and page 18, lines 1-3; and the Figure.]]**

assigning automatically, by the one or more computers, the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position; **[[Basis as least at page 16, lines 1-2 and line 17 – page 17, line 3; page 18, lines 10-13; and the Figure.]]**

making available for acceptance automatically, by the one or more computers, the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and **[[Basis at least at page 6, lines 12-16; page 9, lines 2-3; page 10, lines 13-14; page 12, lines 6-11, page 13, lines 5-10, page 16, lines 16-19, page 20, lines 3-5; and the Figure.]]**

assigning, by the one or more computers, the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker. **[[Basis at least at page 16, line 17 – page 17, line 3; and page 18, lines 10-13; and the Figure.]]**

Note that the claim language “*serving the one or more web pages . . . with an electronic capability*” means that the server hosting the web page serves a web page with this capability. It

does not refer to the computer client of the worker as performing the operation. Note that the language “*in response to one or more respective electronic requests*” clarifies that the system and method serve this electronic capability to make an acceptance at least in response to a request coming in from another computer, such as a browser request by or for one or more preferred or additional workers.

The word “*acceptance*” in the claims means the serving of the position on the worker’s web page is an offer of the position (not merely a listing of positions that the worker can apply for, with a subsequent decision-maker reviewing resumes and making a selection), and the receipt by the system of the electronic acceptance of that position from a worker for which the position was made available, results directly in assigning that position to the worker with no further decision-making. See applicant’s specification at page 16, line 18 – page 17, line 3, and page 18, lines 10-13.

Additionally, claim element “*the one or more computers configured for automatically making available the new open position to one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period;*” may be implemented, in a variety of different ways. For example, the position information might not be displayed on the respective web pages of the respective additional workers until the specified time period has lapsed. Alternatively, this operation may be performed by displaying the position information on the respective web pages of the respective additional workers in the second tier, but only serving the electronic capability of making the electronic acceptance (e.g., an activated acceptance button) on the respective one or more web pages on the respective worker web pages of the respective additional workers in

the second tier after the specified time period has lapsed with no electronic acceptance being received from a preferred worker.

The word “*direct*” in the independent claims means that there is no further decision-making that takes place after receipt of the acceptance from the worker.

GROUP 2 CLAIMS:

125. The system of claim 123, further comprising the one or more computers configured for specially marking the new open position on the respective web pages associated only with the one or more respective preferred workers, so that on each respective web page associated only with one of the respective preferred workers, the new open position is differentiated from other open positions listed on that respective web page associated only with the one respective preferred worker. **[[Basis at least at page 16, lines 12-13; page 18, lines 15-17; page 20, line 3-5.]]**

134. The method of claim 132, further comprising specially marking the new open position on the respective web pages associated only with the one or more respective preferred workers, so that on each respective web page associated only with one of the respective preferred workers, the new open position is differentiated from other open positions listed on that respective web page associated only with the one respective preferred worker. **[[Basis at least at page 16, lines 12-13; page 18, lines 15-17; page 20, line 3-5.]]**

GROUP 3 CLAIMS:

130. The system of claim 123, further comprising the one or more computers configured for serving of the new open position during the specified time period only to the one or more respective web pages associated with the one or more respective preferred workers.

[[Basis at least at page 6, lines 8-17; page 16, lines 10-17; page 18, lines 15-17.]]

139. The method of claim 132, further comprising serving of the new open position during the specified time period only to the one or more respective web pages associated with the one or more respective preferred workers. **[[Basis at least at page 6, lines 8-17; page 16, lines 10-17; page 18, lines 15-17.]]**

GROUP 4 CLAIMS:

92. The system of claim 123, wherein the workers are substitute teachers. **[[Basis at least at page 1, lines 12-13, 20; page 2, lines 1-11; page 6, line 5; page 7, lines 1-19; page 15, lines 15-19; page 16, line 10.]]**

102. The method of claim 132, wherein the workers are substitute teachers. **[[Basis at least at page 1, lines 12-13, 20; page 2, lines 1-11; page 6, line 5; page 7, lines 1-19; page 15, lines 15-19; page 16, line 10.]]**

104. The system of claim 123, with the one or more computers further configured to receive an administrative designation of a worker who has accepted an open position at a location, for another open position at the same location for a different day. **[[Basis at least at page 7, lines 11-15.]]**

107. The method of claim 132, further comprising receiving an administrative designation of a worker, who has accepted an open position at a location, for another open position at the same location for a different day. **[[Basis at least at page 7, lines 11-15.]]**

113. The system of claim 123, with the one or more computers further configured to serve an assignment of the new open position automatically after receiving an electronic acceptance of the specific open position from one of the one or more preferred workers. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

114. The method of claim 132, further comprising serving an assignment of the new open position automatically after receiving an electronic acceptance of the specific open position from one of the one or more preferred workers. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

143. The system of claim 123, wherein the one or more computers are configured to receive the electronic acceptance from the Internet. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

144. The method of claim 132, wherein the one or more computers are configured for the assigning steps to receive the electronic acceptance from the Internet. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

145. The system of claim 123, wherein the one or more computers are configured for automatically assigning the new open position in response to receipt of an electronic acceptance

from one of the web pages. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

146. The method of claim 132, wherein the one or more computers are configured for the assigning steps for automatically assigning the new open position in response to receipt of an electronic acceptance from one of the web pages. **[[Basis at least at page 16, line 17 – page 17, line 1; page 5, lines 8-14; page 9, lines 2-3.]]**

6. Grounds of Rejection to be Reviewed on Appeal

A first issue on appeal is whether the Examiner erred in rejecting claims 89-91, 98-1-101, 103, 105-106, 108, 121-142 under 35 USC 103 (a) as being unpatentable over the four-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al** (U.S. 6,049,776) and further in view of **Pinard** (U.S. Patent No. 5,940,834) and further in view of **McGovern et al** (U.S. 5,978,768).

A second issue on appeal is whether the Examiner erred in rejecting claims 92, 102, 104, 107, 113-114, and 143-146 under 35 USC 103 (a) as being unpatentable over the five-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al** (U.S. 6,049,776) and further in view of **Pinard** (U.S. Patent No. 5,940,834) and further in view of **McGovern et al** (U.S. 5,978,768), and yet further in view of **Thompson et al** (U.S. 6,334,133).

7. Argument

A. Section 103 Rejection Based on a Four-way Reference Combination

Group 1: Independent claims 123 and 132, and dependent claims 89, 90, 91, 98-101, 103-106, 109-110, 121-122, 124, 126-127, 131, 133, 135, 138-142 have been rejected under 35 USC 103 over a four-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al.** (U.S. 6,049,776) and further in view of **Pinard** (U.S. Patent No. 5,940,834) and further in view of **McGovern et al.** (U.S. 5,978,768).

A problem that applicant discovered at the time of the claimed invention was **how to use preferences** to preferentially offer and award jobs to particular workers **in a prior art environment of broadcasting open positions on the Internet**. The claimed system and method time the availability of the positions and include:

- (1) **serving a notification to and an electronic capability to make an electronic acceptance to web pages of preferred workers during a specified time period**, [Such an electronic capability might comprise a button or icon on the worker's web page that may be clicked to accept the position, for example.]
- (2) **with the system set up so that it will only assign the positions to one of the preferred workers during this specified time period on receipt of an acceptance, i.e., receipt of an acceptance from a preferred worker triggers an automatic assignment of the position without further decision-making.**

- (3) **at the expiration of the specified time period**, the position is opened up to a second group of pre-qualified workers to provide an acceptance for the position.

What is missing from the prior art references considered individually or in combination are the following claim elements in the context of the overall claim as a whole:

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional

respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

[The reference combination teaches away from this timed availability to a 2nd group of workers (which may include the 1st group) after a specified time has elapsed.]

the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

Independent claim 123 electronically provides timed exclusive availability, based on a specified time period, for receiving an electronic acceptance from one of the plurality of preferred workers, where the electronic acceptance **triggers an automatic electronic assignment of the position to the accepting employee without further decision-making** by the system. This timed availability is set **in the context of serving** to the respective web pages of the preferred workers **an electronic capability to make an electronic acceptance**, which acceptance results in a direct assignment. After this specified period has lapsed without

receiving an electronic acceptance from one of the preferred workers, the system makes the position available to a second tier of additional workers and the preferred workers. There is nothing in the prior art in August 2000 that suggests or points to such a system timing with respect to served individual web pages. The prior art of record teaches away from such a system and method and would require a fundamental change in their respective operations.

Claim 123 includes a number of operations for setting a context for the operation of the claimed method and system, as a whole. The claimed context requires the initial operations of **“obtaining information about a new open position,”** coupled with the operation of **“obtaining information about one or more of the workers that are preferred (“a preferred worker”) for the new open position,”** coupled with the operation of **“filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified.”** Thus, workers are grouped into at least two tiers: preferred workers; and additional pre-qualified workers and preferred workers.

The Office Action states that one of ordinary skill in the art would be motivated to modify the method of Clark, in view of Donnelly and Pinard to match employees to job qualifications via an individual web page, with the web page accessed by a potential employee as taught by McGovern. See the Office Action at pages 3-7. The articulated reasoning provided for this combination is that once the combination of these elements is made, *“one of ordinary skill would have recognized that the results of the combination were predictable.”* This is basic hindsight review of applicant’s claims and applicant’s specification and using it as a roadmap. **The test is not to start with the combination of applicant’s claim and determine whether the result of that combination, once constructed with all of its elements, is predictable. The test**

is whether one of ordinary skill in the art would have some reason from the prior art at the time of the invention, to make the specific combination in the manner claimed, as required by the holding in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). Note in particular that the person of ordinary skill is not from 2010, but rather from August 2000, the filing date of the application. **Moreover, the use of individual web pages to implement timed availability is disclosed or suggested in the none of the prior art of record.**

THE REFERENCE CLARK (resume and job reporting): The claims have been rejected under 35 USC 103 over Clark et al. (US 5,164,897) in view of three other references. Clark is directed to matching personnel to three sets of job criteria in three different data files. A first group of employees is obtained by matching job titles and a corresponding employee code. A second group of employees is obtained based on industrial experience. A third group of employees is obtained based on special skills which are selected using a skills menu such as menu 206 in Fig. 2b. Then employee records for those employees in all three groups are selected. See the Abstract and Figs. 1a and 1b and the Summary of Invention for Clark. As the examiner states, Clark discloses filtering based on criteria.

The Office Action at the bottom of page 3 to the top of page 4, cites column 7, lines 57-67 as disclosing the claim element “*assigning the open position, after the expiration of the specified time period, to one of the qualified workers . . . in direct response to receipt of an electronic selection of the new open position from that qualified worker.*” This is not correct. See the **Declaration of Dougherty** at paragraph numbers 10-11. Clark teaches a system selection based on the three groups noted above, with the filtered employees then **listed in a report**. See column 2, lines 58-62; column 5, lines 41-49; column 10, line 64 - column 11, line

2; column 14, lines 7-56; column 15, line 21 – column 16, line 42; column 17, line 11 and Figures 6 and 7. Clark does not teach serving to job requesters an electronic capability to accept, with a received acceptance resulting in an automatic assign of the job without further decision-making. There is no system timing using web pages with two timing periods for acceptance for different groups. Rather, Clark sends a report.

The culmination of the Clark operation is a report. See the **Declaration of Dougherty** at paragraph number 10. This is a direct teach-away to the claimed computer system logic, which claimed logic requires the serving of an electronic capability on the respective web pages of the preferred workers to transmit an electronic acceptance (“*the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position* in response to the one or more respective electronic requests by or for the one or more preferred workers; the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position.”) Clark directly teaches away from automatic system assignment using a tiered timing, where electronic acceptances can be received, and a position automatically assigned both during a specified period (to one tier set of workers, i.e., the preferred workers) and after expiration of the specified period (if no acceptance had been received during the period) to another tier set of workers. This was not obvious to one of ordinary skill in year 2000. Clark’s generation of reports does not speak to this.

Applicant has also found no disclosure in Clark on hosting a separate web page for each of a plurality of workers, with each different respective worker web page associated with only the respective worker. Applicant has also found no disclosure in Clark of the serving of an offer of a position on a separate web page of the respective employee, that the employee can accept, without further decision-making by the company.

THE REFERENCE DONNELLY (Calendar maintenance): The second reference cited in this 4-way combination is Donnelly. The examiner, at the top of page 4 of the Office Action, cites Donnelly, column 13, lines 8-35, as disclosing providing an immediate system response to an electronic receipt of a position selection.

Donnelly is directed to a resource management system (RMS) with a database of employee skills and their respective schedules. A calendar functionality is provided to determine employee availability to staff a particular project. See the Donnelly abstract. The RMS system reviews the individual calendars of the employees that are determined to be qualified, and then assigns the positions to staff the project to the respective qualified employees that have open time on their respective calendars. The assignment by the project manager or his staff of employees for a project is shown in Fig. 53 and described beginning at column 28, line 46.

The Office Action refers to column 13, lines 8-35 of Donnelly. This text reference in Donnelly teaches that the company assigns the project to the respective qualified employee (column 13, lines 16-17), and then updates in real time the employee's respective workbench calendar (column 13, lines 30-31). If the project is tentative, and if it is subsequently cancelled, so that it is no longer available for assignment to anyone, then the respective calendars of the employees assigned to the cancelled project are updated to cancel this project assignment on their

respective calendars, and the employees are made available for other project assignments by other managers (lines 9-13, and column 18, lines 20-29).

Applicant has found no disclosure in Donnelly of serving of an electronic capability on the respective web pages of preferred workers to transmit an electronic acceptance in response to one or more respective electronic requests by or for these preferred workers (“*the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers; the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position.”)* Nor is there disclosure or suggestion in Donnelly of a system design where receipt of an acceptance from an applicant operates as a triggering event that causes an assignment in response to receiving the electronic acceptance from the worker, with no further decision-making. See the **Declaration of Dougherty** at paragraph number 13.

Donnelly is a direct teach-away from the claimed invention, as it teaches a company assignment of the positions without employee acceptance. See the **Declaration of Dougherty** at paragraph number 14. Alteration of Donnelly would require a fundamental change in its operation. Donnelly simply does not teach timing to at least two tiers of workers (e.g., the preferred workers, and the second tier of additional qualified workers and the preferred workers), where the position is made available to a second tier of workers only after the lapse of a specified

time period. **This claimed configuration for timing, in an environment of the broad band Internet systems of year 2000, was unique and non-obvious.** See the **Declaration of Dougherty** at paragraph number 14.

THE REFERENCE PINARD (electronic employee directory): The third reference cited in this 4-way combination, is Pinard. Pinard discloses a web page generator for an administrator to automatically create a web page directory, and allows an individual with network access to view the directory information in a web page format. See the Abstract.

The Office Action cites Figs. 4A, 6 and 8, and column 6, lines 14-20 of Pinard and column 4, lines 29-40, for disclosing to one of ordinary skill individual worker web pages where the web page is configured for notifying the one or more preferred workers that the new position is now available for selection. This is not correct. See the **Declaration of Dougherty** at paragraph number 17. The individual web pages in the Pinard directory are devoted to the respective individual employees and their respective characteristics, such as their name and work group. The examiner cites column 8, line 38-45 as disclosing a “mail” button on the Pinard web page which allows the user to accept positions. This is not correct. See the **Declaration of Dougherty** at paragraph number 17. These web pages are for directory information about the individual to be viewed by third parties. The Pinard “mail” button disclosed at column 8, lines 47-50, and referenced at the bottom of page 4 of the office action, is for sending an email “*to the person whose web page is being displayed.*”

Pinard discloses nothing about individual web pages with open positions posted for which the respective person is qualified. See the **Declaration of Dougherty** at paragraph number 17. Pinard discloses nothing about serving an electronic capability to accept a position

on the respective one or more web pages of the preferred workers to transmit/send an electronic acceptance of the position, or in a timed sequence, making the position available to another tier of workers to transmit/send an electronic acceptance of the position, much less **a system where receipt of an electronic acceptance from a worker for which the position is available automatically assigns the position to the accepting worker, directly without further decision-making processing.** See the **Declaration of Dougherty** at paragraph number 17. **Pinard discloses nothing about timed availability, by computer, to at least two tiers of individually accessed worker web pages (e.g., the preferred workers, and the second tier of additional workers and the preferred workers).** See the **Declaration of Dougherty** at paragraph number 17.

THE MCGOVERN REFERENCE (receive and screen resumes): The fourth reference in the 4-way combination is McGovern.

McGovern discloses a system where a job seeker can learn about positions (column 15, lines 1-8) and then send a resume to an individual company. See column 15, lines 50-58 and column 16, lines 14-24. The company “hiring contact” can then display a list of the resumes received (column 17, lines 34-37), and score them (column 17, line 55). The hiring contact can email a resume (column 17, line 59).

The Office Action at pages 4-5 cites McGovern as disclosing a system that automatically assigns the new open position to a preferred worker and then removes the position as available for acceptance, citing Fig. 6, column 8, lines 14-26, and column 10, line 66 – column 11, line 18.

But Fig. 6 simply discloses for use by the hiring contact an Add Position button, an Edit Position button, a Duplicate Position button, a Deactivate Position button and a Print Position

button. The McGovern citation by the examiner of column 10, line 66 – column 11, line 18 discloses deleting a position when it is no longer active.

What is claimed in the present application is a system and method for notifying preferred workers, by serving the web pages of the one or more preferred workers with an electronic capability on the respective web pages of these one or more preferred workers to transmit/send an electronic acceptance for the new position in response to one or more respective electronic requests by or for these preferred workers and automatically assigning to the first preferred worker to transmit an electronic acceptance during a specified period of time, and in the context of timed availability, making the position available to one or more other pre-qualified workers to transmit/send an electronic acceptance, after the specified time period has lapsed with no preferred worker accepting the position. See claims 123 and 132.

McGovern teaches away from applicants' independent claims. See the **Declaration of Dougherty** at paragraph number 22. McGovern does **NOT** teach **serving an electronic capability on the respective web pages of these one or more preferred workers to transmit/send an electronic acceptance** of the new position, or making the position available to another tier of workers, if the specified time period lapses with no preferred worker accepting the position. See the **Declaration of Dougherty** at paragraph number 21. McGovern does **NOT** teach automatically assigning a position based on the trigger of receipt of an electronic acceptance from a worker listed in the database of the claim for which the position is available. See the **Declaration of Dougherty** at paragraph number 21. Rather, Fig. 6 of McGovern, cited in the Office Action, is a tool bar for a company administrator, the "hiring contact," to add or delete positions. Column 8, lines 14-26 of McGovern explains that the company administrator

can manually add open positions and can manually delete positions using the tool bar. McGovern notes that the position may only be open for a certain period of time (column 9, lines 41-55), after which the position is not available to anyone. Column 10, line 66 – column 11, line 18 of McGovern again discusses manual deletion, but adds the feature of automatic deletion, based on previously entered position expiration dates provided by the company hiring contact, after which the position cannot be assigned to anyone.

When McGovern deactivates the position in column 11, lines 1-18, it deactivates the position for all job applicants. **McGovern** teaches away from the claim by this McGovern deactivation operation of the position for all job applicants. See the **Declaration of Dougherty** at paragraph number 22. It would require a fundamental alteration of the operation of McGovern to not deactivate for all applicants, but rather to do the opposite by opening the position up to another tier of workers. **McGovern**, with this disclosed deactivation operation for the position, **does exactly the opposite** of the claimed operation of automatically opening the system after the specified time period has lapsed, via making the position available to a new tier of workers, and receiving an electronic acceptance from a workers in this new tier of additional workers and preferred workers, and assigning the position in response to receipt of such an electronic acceptance. See the **Declaration of Dougherty** at paragraph number 22. McGovern suggests nothing about setting up at least two tiers of applicants (e.g., a preferred set of workers, and a second tier of additional workers and preferred workers) based on the timing. Rather, McGovern does the opposite, by deactivating the position for all workers after a specified time, as the examiner states at page 6, first full paragraph.

NO ARTICULATED REASONING FOR COMBINATION: The Office Action states that one of ordinary skill in the art would be motivated to modify the method of Clark, in view of Donnelly and Pinard to match employees to job qualifications via an individual web page, with the web page accessed by a potential employee as taught by McGovern. Each of these references is missing multiple elements of independent claims 123 and 132. The rationale provided is that *“the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.”*

This is a conclusionary statement based on hindsight review of applicants' claims and applicant's specification. The test is not to start with the combination of elements of applicant's claim and determine whether the result of that combination, once constructed in the manner claimed, is predictable. The test is whether one of ordinary skill in the art would have some reason from the prior art at the time of the invention, to make the specific combination claimed in the specific way claimed, as required by the holding in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). Note in particular that the person of ordinary skill is not from 2010, but rather from August 2000, the filing date of the application, and that each of these references is missing multiple of the claim elements.

There is nothing in either Clark or Pinard or Donnelly or McGovern to explain or suggest or provide any form of roadmap on how or why one of ordinary skill would modify Clark (a system for selecting resumes or job openings for listing in a report), by using Donnelly (an electronic calendar system for automatically determining employee project availability and then

selecting employees automatically for a given project without employee input), using Pinard (a directory web page generator for an administrator), with McGovern (a job search system), to enable, in the manner claimed, a multi-tier timing system based on a set of preferred workers, and a second tier of pre-qualified workers, implemented **by automatically assigning the position on receipt of an electronic acceptance from a worker in the tier of one or more preferred workers during the “specified time period,” and then, after expiration of the specified time period, opening up to and making the position available to pre-qualified workers in a second tier, and assigning the position automatically on receipt of an electronic acceptance received from a worker in this second tier of workers.** See the **Declaration of Dougherty** at paragraph number 27. This two-tiered timing is not disclosed or suggested by any of these references. The method and system operation required by independent claims 123 and 132 was not obvious to one of ordinary skill in the art in August 2000, and the teachings in these references that teach away further support that non-obviousness.

These references would not enable one of ordinary skill in the art to create the system and method as claimed.

Accordingly, no prima facie case for obviousness of the invention **“as a whole,”** under 35 USC 103 has been made. There are multiple teach-aways in each of these 4 references. No **“articulated reasoning with some rational underpinning”** to support an obviousness rejection of the invention claims, as a whole, is set forth, per the requirement of *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). The presence of these teach-aways and fundamental changes to the operation of these references indicates that no such rationale existed in year 2000, the year of filing.

FURTHER EVIDENCE OF NON-OBVIOUSNESS—DECLARATION OF SKILLED PERSON IN THE ART:

Declaration of Edmond John Dougherty: Additional evidence is the Declaration of Mr. Edmond John Dougherty, submitted with the Response filed on May 21, 2010. Mr. Dougherty has over 30 years of design and development experience with complex electronic and software systems, with substantial Web experience. He is President of Ablaze Development Corporation and a founder of Wavecam Media, Inc. Ablaze Development (www.ablazeddevelopment.com) provides product design services. Wavecam Media (www.wavecam.com), a spin-off of Ablaze Development, produces and operates a aerial remote camera systems for sports and entertainment. Mr. Dougherty was also a founder of August Design, LLC., a company established in 1984 and recently sold to Transcore.

Mr. Dougherty is a Visiting Assistant Professor at Villanova University with joint appointments in the Electrical, Computer and Mechanical Engineering Departments. He specializes in software development, Web interfacing, project management, artificial intelligence, creativity and electronics design.

Paragraph references to Mr. Dougherty's Declaration statements as they pertain to the references applied in the Office Action, have been set forth in the appropriate sections above. He concluded as follows:

27. As per my discussion above, I found nothing in either Clark or Pinard or Donnelly or McGovern to explain or suggest or provide any form of roadmap on how or why one of ordinary skill would modify Clark (a system for selecting resumes or job openings for listing in a report—the antithesis of receiving an

acceptance and triggering an automatic assignment in direct response), by using Donnelly (a system for automatically determining employee project availability and calendaring, and then selecting employees automatically for a given project—a system where employees are not given an electronic capability to accept—which was the point of the citation of Donnelly in the Office Action), using Pinard (a directory web page generator for an administrator—with individual web pages, but with no listing of open positions or an electronic capability to accept—which was the point of the citation of Pinard in the Office Action) with McGovern (a job search system—cited in the Office Action for disclosing timed tiering—where there is no second tier), to enable, in the manner claimed, a multi-tier timing system based on a set of preferred workers, and a second tier of workers comprising additional qualified workers and the preferred workers, and serving respective worker web pages with an electronic capability to make an electronic acceptance of the position to trigger an assignment.

28. **Conclusion:** Based on the above and based on my experience, it is my opinion that the system of claim 123 and the method of claim 132 were not obvious to one of ordinary skill in the art in August 2000, particularly in view of the teachings in these references that teach away from and fail to enable the claimed combination. The presence of the cited text in these references teaching away from the claimed combinations would not be ignored by the person of ordinary skill in the art and is a clear indicator to me that one of ordinary skill in

the art would not be motivated by the prior art in year 2000, to make the claimed combination.

Accordingly, claim 123 is allowable for these reasons. The claims dependent thereon are also allowable for these reasons, and also in their own right based on the additional limitations that they add. Method claim 132 and claims dependent thereon are allowable for similar reasons.

Accordingly, it is requested that this rejection of the claims be overturned and the case passed to issue.

Group 2: Claims 125 and 134 have been rejected under 35 USC 103 over a four-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al** (U.S. 6,049,776) and further in view of **Pinard** (U.S. Patent No. 5,940,834) and further in view of **McGovern et al** (U.S. 5,978,768).

Claims 125 and 134 add programming in the one or more computers to serve web pages *“for specially marking the new open position on the respective web pages associated only with the one or more respective preferred workers, so that on each respective web page associated only with one of the respective preferred workers, the new open position is differentiated from other open positions listed on that respective web page associated only with the one respective preferred worker.”*

The office action references McGovern at Fig. 31 (presumably mark 206) and column 17, lines 44-58 for disclosing this programming. However, Fig. 31 is an illustration of the company display screen for the *“hiring contact”* (column 17, lines 35-53). This display screen lists the different resumes received for the position. The display screen does **not** list the

individual web page *associated only with the respective preferred worker*. It would be counter-intuitive to modify this teaching to display the page shown in Fig. 31 to an applicant, as the page lists the resumes of **all** of the applicants applying for the position. Moreover, the mark of McGovern's Fig. 31 indicates that the received resume has been scored (column 17, line 57-58). **The mark does not indicate that the worker is a "preferred worker"** for this position, as determined by the system, and that the worker is one of an exclusive group of one or more preferred workers receiving an offer to accept, where the system will only assign this position to preferred workers during a specified time period.

In addition, these claims distinguish over the four-reference combination for the reasons set forth above for Group 1.

Accordingly, no prima facie case for obviousness of the invention "**as a whole**," under 35 USC 103 has been made for claims 125 and 134. Thus, it is requested that this rejection of claims 125 and 134 be overturned and the case passed to issue.

Group 3: **Claims 130 and 139** have been rejected under 35 USC 103 over a four-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al** (U.S. 6,049,776) and further in view of **Pinard** (U.S. Patent No. 5,940,834) and further in view of **McGovern et al** (U.S. 5,978,768).

Claims 130 and 139 require that the one or more computers are configured "*for serving of the new open position during the specified time period only to the one or more respective web pages associated with the one or more respective preferred workers.*" This means that the other qualified workers not only will not have served to their respective web pages the electronic capability to accept the position until the specified time period expires, but also will not receive

any information at all about the position. This limitation means that although the worker is pre-qualified, he/she does not receive any information about the open position until after the specified time period has lapsed.

There is no disclosure in the cited prior art on this feature. The examiner cites Pinard and McGovern as disclosing this claim limitation. In Pinard, there is disclosed a web page generator for an organizational directory. In Pinard, a web page may be set up for a project. But there is no disclosure of **withholding** information from qualified applicants on open positions for a specified period of time. The examiner's Pinard citation of column 6, lines 14-34 has no pertinence to the claim limitation. The examiner also cites McGovern Fig. 36 and column 9, lines 41-55. This citation indicates that the hiring contact may enter information about the position such as education requirements, and then can request resumes to review based on these entered criteria (Fig. 36). It says nothing about withholding information on jobs for which a job seeker is qualified.

Accordingly, no prima facie case for obviousness of the invention "**as a whole**," under 35 USC 103 has been made. Thus, it is requested that this rejection of claims 130 and 139 be overturned and the case passed to issue.

B. Section 103 Rejection Based on a Five-way Reference Combination

Group 4: Claims 92, 102, 104, 107, 113-114, and 143-146 are rejected under 35 USC 103 (a) as being unpatentable over the five-way reference combination of U.S. Patent Nos. **Clark et al.** (U.S. 5,164,897) in view of **Donnelly et al** (U.S. 6,049,776) and further in view of **Pinard**

(U.S. Patent No. 5,940,834) and further in view of **McGovern et al** (U.S. 5,978,768), and yet further in view of **Thompson et al** (U.S. 6,334,133).

The same arguments apply as for **Group 1** for the inapplicability of the references **Clark et al.** in view of **Donnelly et al** and further in view of **Pinard** and **McGovern et al**. The reference **Thompson** discloses nothing about timed availability of a position to different groups of workers.

Accordingly, for the reasons stated above, the claims of Group 4 are patentable over the four-way reference combination. Thus, it is requested that this rejection be overturned.

9. Summary

Even though the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), made it clear that the teaching, motivation or suggestion test need not reside solely in the prior art, the Court did not disturb decades of jurisprudence holding that the claim itself cannot provide the rationale and frame to combine elements from the prior art to recreate it. *W.L. Gore & Associates v. Garlock, Inc.*, 721 F. 2d 1550, 1552 (Fed. Cir. 1983).¹ See also *In re Warner*, 379 F. 2d 1011 (C.C.P.A. 1967). Moreover, even if such a forbidden combination is made, the combination is **still missing the following claim elements** of independent claim 123:

¹ "Having learned the details of Dr. Gore's invention, the district court found it within the skill of the art to stretch other material rapidly (Markwood); to stretch PTFE to increase porosity (Sumitomo); and to stretch at high temperatures (Smith). The result is that the claims were used as a frame, and individual, naked parts of separate prior art references were employed as a mosaic to recreate a facsimile of the claimed invention. At no point did the district court, nor does Garlock, explain why that mosaic would have been obvious to one skilled in the art in 1969, or what there was in the prior art that would have caused those skilled in the art to disregard the teachings there found against making just such a mosaic."

“the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;”

“the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;”

“the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers;”

“the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.”

Also, the following elements of independent claim 132 are missing:

“serving, by the one or more computers, the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;”

“assigning automatically, by the one or more computers, the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;”

“making available for acceptance automatically, by the one or more computers, the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and”

“assigning, by the one or more computers, the new open position, after the expiration of the specified time period, to one of the workers for which the new

open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker. "

Thus, for the foregoing reasons, it is submitted that the examiner's rejection are erroneous, and reversal of the applied rejections is respectfully requested.

Respectfully submitted,

Date: 12/1/10

By 

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CLAIMS APPENDIX:

1. – 88. (Cancelled)

89. (Rejected) The system of claim 123, wherein the one or more computers are configured to serve on each web page associated only with a respective one of the workers only open positions for which the respective one worker is qualified and for which the position is currently available for acceptance through the web page associated only with the one worker.

90. (Rejected) The system of claim 123, wherein the one or more computers are configured to serve to each respective web page associated only with a respective one of the workers only the open positions that the respective one worker is qualified to fill.

91. (Rejected) The system of claim 123, further comprising:
the one or more computers configured to filter out for a respective one of the workers one or more open positions for which the respective one worker has been rejected;
the one or more computers configured to serve to the respective web page associated only with the respective one worker only open positions that the respective one worker is qualified to fill and that have not been filtered out for the respective one worker.

92. (Rejected) The system of claim 123, wherein the workers are substitute teachers.

93. - 97. (Canceled)

98. (Rejected) The method of claim 132, further comprising serving on the respective web page associated only with the respective one worker only open positions for which the respective one worker is qualified and which are currently available for acceptance through the web page associated only with the one worker.

99. (Rejected) The method of claim 132, further comprising serving on the respective web page associated only with a respective one of the workers only the open positions that the respective one worker is qualified to fill.

100. (Rejected) The method of claim 132, further comprising:
filtering out for a respective one of the workers, by one or more computers, open positions for which the respective one worker has been rejected; and
serving on the respective web page associated with the respective one worker only the open positions that the respective one worker is qualified to fill and that have not been filtered out for the respective one worker.

101. (Rejected) The method of claim 132, further comprising allowing access to the respective web page associated only with a respective one of the workers in response to receiving at least one pass code and verifying the received at least one pass code.

102. (Rejected) The method of claim 132, wherein the workers are substitute teachers.

103. (Rejected) The system of claim 123, with the one or more computers configured so that each web page associated with a respective one of the workers serves only the open positions that the respective one worker is qualified to fill and has not been rejected by a worker whose absence creates the specific open position.

104. (Rejected) The system of claim 123, with the one or more computers further configured to receive an administrative designation of a worker who has accepted an open position at a location, for another open position at the same location for a different day.

105. (Rejected) The system of claim 123, with the one or more computers configured to serve information about the new open position to the one or more respective web pages associated only with the one or more respective preferred workers during the specified time period.

106. (Rejected) The method of claim 132, further comprising serving, by one or more computers, one of the open positions only to the respective web page associated only with one of the workers that is qualified only if that qualified worker has not been rejected by a worker whose absence creates the specific open position.

107. (Rejected) The method of claim 132, further comprising receiving an administrative designation of a worker, who has accepted an open position at a location, for another open position at the same location for a different day.

108. (Rejected) The method of claim 132, wherein the serving step serves, by one or more computers, information about the new open position to the respective web pages associated only with the respective one or more preferred workers during the specified time period.

109. (Rejected) The system of claim 123, with the one or more computers further configured to notify the one or more preferred workers via e-mail or e-pager.

110. (Rejected) The method of claim 132, further comprising notifying the one or more preferred workers via an e-mail or e-pager message.

111-112. (Cancelled)

113. (Rejected) The system of claim 123, with the one or more computers further configured to serve an assignment of the new open position automatically after receiving an electronic acceptance of the specific open position from one of the one or more preferred workers.

114. (Rejected) The method of claim 132, further comprising serving an assignment of the new open position automatically after receiving an electronic acceptance of the specific open position from one of the one or more preferred workers.

115-120. (Cancelled)

121. (Rejected) The system of claim 123, further comprising means for notifying electronically the one or more preferred workers about the new open position.

122. (Rejected) The method of claim 132, further comprising the step of notifying electronically the one or more preferred workers about the new open position.

123. (Rejected) A system comprising:

one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers;

one or more computers configured for filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified;

the one or more computers configured for serving a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving comprising

serving information on one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases;

the one or more computers configured for obtaining information about a new open position;

the one or more computers configured for obtaining information about one or more of the workers that are preferred ("a preferred worker") for the new open position;

the one or more computers configured for updating electronically the information in the one or more databases to include information on the new open position;

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests for open positions by or for the one or more preferred workers;

the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

124. (Rejected) The system of claim 123, wherein the one or more computers are further configured for receiving information designating one or more of the workers as the one or more preferred workers for the new open position.

125. (Rejected) The system of claim 123, further comprising the one or more computers configured for specially marking the new open position on the respective web pages associated only with the one or more respective preferred workers, so that on each respective web page associated only with one of the respective preferred workers, the new open position is differentiated from other open positions listed on that respective web page associated only with the one respective preferred worker.

126. (Rejected) The system of claim 123, further comprising the one or more computers configured for serving or otherwise electronically communicating a confirmation number to the worker in response to receiving the electronic acceptance of the new open position from the worker.

127. (Rejected) The system of claim 123, further comprising the one or more computers configured for filtering to prevent serving of one of the open positions to one of the respective worker web pages based on one or more preferences associated with the respective worker in the one or more databases.

128. (Rejected) The system of claim 123, further comprising the one or more computers configured for filtering to prevent serving of one of the open positions to one of the respective worker web pages based on the position not being available for acceptance to the respective worker.

129. (Rejected) The system of claim 123, further comprising the one or more computers configured for filtering to prevent serving of any open position to the respective web page of any respective worker that is not qualified to fill the open position.

130. (Rejected) The system of claim 123, further comprising the one or more computers configured for serving of the new open position during the specified time period only

to the one or more respective web pages associated with the one or more respective preferred workers.

131. (Rejected) The system of claim 123, wherein the one or more computers are configured for automatically making available for acceptance the new open position to a plurality of additional respective worker web pages associated only with a plurality of additional respective workers that are qualified for the new open position, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period.

132. (Rejected) A method, comprising:

accessing one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers;

filtering, by one or more computers, to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified;

serving, by the one or more computers, a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving information on comprising serving one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases;

obtaining information about a new open position;

obtaining information about one or more of the workers that are preferred ("a preferred worker") for the new open position;

notifying, by the one or more computers, the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests for open positions by or for the one or more preferred workers;

serving, by the one or more computers, the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

assigning automatically, by the one or more computers, the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

making available for acceptance automatically, by the one or more computers, the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and serving the one or more web pages of the one or more respective additional workers with an electronic

capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

assigning, by the one or more computers, the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

133. (Rejected) The method of claim 132, further comprising: receiving information designating one or more of the workers as the one or more preferred workers for the new open position.

134. (Rejected) The method of claim 132, further comprising specially marking the new open position on the respective web pages associated only with the one or more respective preferred workers, so that on each respective web page associated only with one of the respective preferred workers, the new open position is differentiated from other open positions listed on that respective web page associated only with the one respective preferred worker.

135. (Rejected) The method of claim 132, further comprising serving or otherwise electronically communicating a confirmation number to the worker in response to receiving the electronic acceptance of the new open position from the worker.

136. (Rejected) The method of claim 132, further comprising filtering, by the one or more computers, to prevent serving of one of the open positions to one of the respective worker web pages based on one or more preferences associated with the respective one worker in the one or more databases.

137. (Rejected) The method of claim 132, further comprising filtering, by the one or more computers, to prevent serving of one of the open positions to one of the worker web pages based on the position not being available for acceptance to the respective worker.

138. (Rejected) The method of claim 132, further comprising filtering, by the one or more computers, to prevent serving of any open position to the respective web page of any respective worker that is not qualified to fill the open position.

139. (Rejected) The method of claim 132, further comprising serving of the new open position during the specified time period only to the one or more respective web pages associated with the one or more respective preferred workers.

140. (Rejected) The method of claim 132, automatically making available for acceptance, by the one or more computers, the new open position to a plurality of additional respective worker web pages associated only with a plurality of additional respective workers that are qualified for the new open position, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period.

141. (Rejected) The system of claim 123,

wherein the one or more computers are configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in immediate response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position; and

wherein the one or more computers are configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in immediate response to receipt of an electronic acceptance of the new open position from that worker.

142. (Rejected) The method of claim 132,

wherein the assigning automatically, by the one or more computers, the new open position only to one of the one or more preferred workers during a specified time period, is performed in immediate response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position; and

wherein the assigning, by the one or more computers, the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance is performed in immediate response to receipt of an electronic acceptance of the new open position from that worker.

143. (Rejected) The system of claim 123, wherein the one or more computers are configured to receive the electronic acceptance from the Internet.

144. (Rejected) The method of claim 132, wherein the one or more computers are configured for the assigning steps to receive the electronic acceptance from the Internet.

145. (Rejected) The system of claim 123, wherein the one or more computers are configured for automatically assigning the new open position in response to receipt of an electronic acceptance from one of the web pages.

146. (Rejected) The method of claim 132, wherein the one or more computers are configured for the assigning steps for automatically assigning the new open position in response to receipt of an electronic acceptance from one of the web pages.

EVIDENCE APPENDIX

Declaration of Edmond John Dougherty submitted with the amendment filed May 21, 2010.

RELATED PROCEEDINGS APPENDIX

None

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Charles BERNASCONI et al.

Title: NOTIFICATION OF
EMPLOYEES VIA PASS
CODE ACCESSED WEB
PAGES

Appl. No.: 09/641,866

Filing Date: 08/18/2000

Examiner: Kristine K. Rapillo

Art Unit: 3626

Confirmation Number: 7547

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF EDMOND JOHN DOUGHERTY

Dear Sir:

I, the undersigned **Edmond John Dougherty**, an American citizen with an office at Ablaze Development Corp., 771 E. Lancaster Avenue, Villanova, Pennsylvania, 19085 USA, hereby declare and state that:

Background

1. I have over 30 years of experience in the design and development and management of complex electronic and software systems and products, with substantial Web experience.

2. I am a Visiting Assistant Professor at Villanova University with joint appointments in the Electrical, Computer and Mechanical Engineering Departments. I specialize in software development, Web interfacing, project management, artificial intelligence, creativity and electronics design. In addition, I lecture in the Villanova School of Business in regard to commercializing technology. I was awarded the 2008 IEEE Philadelphia Member Award for outstanding contributions to the field of electrical and electronics engineering.

3. I am President of Ablaze Development Corp and a founder of Wavacam Media Inc. Ablaze Development (www.ablazedevdevelopment.com) provides product design services. Wavacam Media (www.wavccam.com), a spin-off of Ablaze Development, produces and operates a aerial remote camera systems for sports and entertainment.

4. I was also a founder of August Design, LLC., a company established in 1984 and recently sold to Transcore.

5. Prior to establishing August Design, I was employed at the Franklin Institute Research Laboratories and Ford Motor Company.

6. Selected examples of some of my accomplishments follow:

- Led the design team for a Web intermodal terminal management software system known as ITOPS, currently used in 38 CSX Intermodal railroad terminals. The system features extensive graphics and expert software systems to run the terminal efficiently.
- Designed Electronic hardware and software for a NASA Ames software flight simulator. The man-rated system is used for the analysis of advanced fixed wing and rotary aircraft, including the space shuttle.
- Designed the hardware and software for a microprocessor-based multiprocessor. The design was a single-instruction, multiple data architecture that utilized a crossbar

switching network.

- Simulated and evaluated computers for NASA Goddard for the attitude control of the space shuttle.
- Designed a Web software Expert System for maximizing the productivity of a container shipping facility.
- Developed software for a number of computer simulations of automated shipping facilities with real time graphic displays.
- Developed analytic and 3D animation models of various cargo operations at a number of airports and marine terminals.
- Designed and built the software for an image processing based vision system to aid in the positioning of container chassis below container cranes.
- Designed the electronic hardware and software for a multi-robot container handling system for a high density, high productivity marine terminal. The system includes several robot designs, distributed processing and a unique infrared local area network.
- Designed and built a micro powered data acquisition system successfully used by NASA in whale migration studies. Also developed assembly language routines to retrieve, analyze and display whale migration data.
- Designed and built a microprocessor-based instrument for the measurement of viscosity. The system includes real-time measurement of viscosity, automatic temperature compensation, automatic density compensation and interface to PC's.
- Designed the hardware and Web software for a local vehicle tracking and health system. The real time system wirelessly provides such parameters as location, direction, speed, engine temperature, oil pressure, air filter status, fuel level, etc.
- Designing a next generation Web-monitored aerial remote control robotic camera system for use in broadcast sports.
- Project lead for the design of a vocal smoke detector, branded KidSmart. The safety device is specifically designed to wake children from sleep during a fire by providing pre-recorded verbal instructions from a familiar voice, such as a parent. The system won an innovation award at the consumer electronics show as well as a Best Of What's New award from Popular Science magazine. The device has been featured on several national TV shows including Good Morning America and NBC Nightly News.
- Project lead for the design of a new type of air hockey table, branded Goal Flex by DMI. The product employs an electronic goal that can change size and move. This permits a number of new types of games and adds excitement to an old indoor sports

favorite.

- Project lead for the design of ESP, a wireless software system for the efficient operation of restaurants. The system maximizes productivity of service personnel in real time.
- Led the design of a stereovision telepresence system to assist crane operators. The system features a head mounted display, as well as pan and tilt capabilities.
- Led the design of the DARTS system (Direct Acquisition Rail To Ship) that permits transfer of ISO containers directly between intermodal railcars and container ships. The system is capable of picking and placing 20, 40, 45 and dual 20 foot containers. The dual 20 foot feature is able to work even if the containers are up to 5 feet apart.
- Designed and built a real time ion mobility spectrometer (IMS) able to detect a variety of materials at atmospheric pressure including explosives, personnel, and illicit drugs.
- Designed a digital video processing system for use in a US Postal Service optical character recognition system (OCR).
- Hardware and software design for a car simulator for Benz of West Germany. The six degree of freedom system is used for the real time analysis of truck and car designs.
- Co-invented a patented system for detecting multiple projectiles in a plane for use in a commercial electronic scoring dart board system.
- On the design team for the development of Best Shot, a sensor system for use in televised boxing events. The sensor is built into a standard boxing glove and is able to measure and transmit via RF, the occurrence, peak force, and amount of power in a boxer's punch. The information is displayed in real time in a variety of graphics displays as an overlay to televised boxing broadcast.
- Under Army sponsorship, I designed and built a working scale model of robotic system to load/unload cargo ships at sea. The system includes a real-time vision system, force feedback control, distributed processing and a unique multiple degree of freedom end effector.
- Designed a Pascal to Ada software code translator.
- Designed a series of general purpose software primitives, functions and routines for an image processing system.
- Development of the functional software specification for a portable, speaking computer tutor for the US Army Research Institute.
- Designed the software and much of the hardware for a single building Energy Management System for use in fast food restaurants and hotels.

- Evaluated the software designs of SCADA (Supervisory Control and Data Acquisition) and EMCS (Energy Monitoring and Control Systems) at various Navy bases.
- Participated in the design review of shipboard frequency changers of the DD963, FFG-7 and the PHM classes.
- Designed a motion stabilized computer controlled robotic aerial camera for use in motion pictures and sporting events. The Emmy Award winning Skycam system includes fiber optic video transmission, distributed processors, a stabilized camera platform, and a precision positioning system.
- Designed a miniature, micro-powered, microprocessor based biological data acquisition system under the NIH sponsorship. The system employs surface mount technology, infrared communications, and data compression schemes
- Conducted tests of shipboard power distribution system under the EPIC program.

5. I have multiple published papers and lectures and ten issued patents and five pending patent applications.

6. My Education is as follows:

Master of Science Computer Science
Villanova University, 1986

Master of Science Engineering Management
Drexel University, 1976

Graduate courses in Electrical Engineering
Villanova University, 1969-1971

Bachelor of Electrical Engineering
Villanova University, 1969

7. I am familiar with the claims and specification of the present patent application 09/641,866 and the Office Action of February 1, 2010. I am in particular, familiar with claims 123 and 132 of this application, which read as follows:

123. A system comprising:
one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers;

one or more computers configured for filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified;

the one or more computers configured for serving a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving comprising serving information on one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases;

the one or more computers configured for obtaining information about a new open position;

the one or more computers configured for obtaining information about one or more of the workers that are preferred ("a preferred worker") for the new open position;

the one or more computers configured for updating electronically the information in the one or more databases to include information on the new open position;

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to each of the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position on receipt of one or more respective electronic requests by or for the one or more additional workers; and

the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

132. A method, comprising:

- accessing one or more electronic databases having information about a plurality of open positions and qualifications for the open positions, and qualifications of a plurality of workers;

- filtering, by one or more computers, to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified;

- serving, by the one or more computers, a plurality of web pages, with each different respective web page in this plurality associated only with a different one of the respective workers and accessible by a respective worker security code, wherein, for each respective worker web page associated only with the respective worker, the serving comprising serving information on one or more of the open positions for which the respective worker is qualified based at least in part on the qualifications of the worker listed in the one or more databases;

- obtaining information about a new open position;

- obtaining information about one or more of the workers that are preferred ("a preferred worker") for the new open position;

- notifying, by the one or more computers, the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to each of the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers;

- serving, by the one or more computers, the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

- assigning automatically, by the one or more computers, the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

- making available for acceptance automatically, by the one or more computers, the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

- assigning, by the one or more computers, the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

B. IN MY OPINION ONE OF ORDINARY SKILL IN THE ART WOULD BE TAUGHT AWAY FROM THE SYSTEM OF CLAIM 123 AND THE METHOD OF CLAIM 132 WHEN PRESENTED WITH THE TEACHINGS OF THE CLARK, DONNELLY, PINARD AND MCGOVERN PATENTS AND WOULD NOT BE MOTIVATED OR LED OR ENABLED BY THE PRIOR ART TO CREATE THE INVENTION OF CLAIMS 123 AND 132

8. I have read and understood application and claims of the above-referenced U.S. patent application 09/641,866 by Bernasconi et al. ("the '866 application"), the Office Action of February 1, 2010 for this application and the patents cited as prior art in the Office Action, namely, U.S. Patent No. 5,164,897 ("the Clark patent"), U.S. Patent No. 6,049,776 ("the Donnelly patent"), U.S. Patent No. 5,940,834 ("the Pinard patent"), and U.S. Patent No. 5,978,768 ("the McGovern patent"). I have reviewed the rationale in the Office Action for one of ordinary skill in the art being led or motivated to combine selected teachings from those patents to create the inventions of claims 123 and 132. In my opinion, based on my experience and understanding of the art as of year 2000, one of ordinary skill in the art would not have been led to select teachings from these four references to create applicant's claims. I saw no motivation or roadmap presented in any of this prior art that would suggest to or lead one of ordinary skill in the art to select certain teachings in these patents and to ignore other teaching in these patents to create the system and method of claims 123 and 132. I base this opinion on the following:

9. **THE REFERENCE CLARK:** My understanding of the Office Action is that Claims 123 and 132 were rejected as being obvious to one of ordinary skill in the art based on Clark et al. (US 5,164,897) and the three other listed references. Clark is directed to matching personnel to three sets of job criteria in three different data files. A first group of employees is obtained by matching job titles and a corresponding employee code. A second group of employees is obtained based on industrial experience. A third group of employees is obtained based on special skills. Then employee records for those employees in all three groups are selected. I base this on the Abstract and Figs. 1a and 1b, the Summary of Invention for Clark, and the various citations to Clark in the Office Action. As the examiner states, Clark discloses filtering based on criteria.

10. The Office Action cites column 7, lines 57-67 as disclosing exclusivity for a group of preferred workers and position assignment timing. My review of this text citation in Clark is that it actually teaches a selection of resumes or job openings to list in a report. I base this on the text of Clark at column 13, line 57 – column 14, lines 30 and Fig. 6 in particular. I saw no teaching in Clark of, following a serving of position information to a tier of one or more worker web pages with a capability on the web page to make an electronic acceptance, making an automatic position assignment triggered by receipt of an electronic acceptance from one of the workers. Rather, I saw just report generation. I also saw no teaching in Clark of computer division of resumes into a preferred tier, and a second tier comprising qualified workers and preferred workers, with an electronic capability served on the respective web pages of the workers to transmit an electronic acceptance served first to the web pages of the preferred worker tier, and then, to worker web pages in a second tier, if a condition is met, namely, that no preferred worker has accepted during the specified time period. Rather, Clark determines a group of qualified employees for a report. I saw no teaching in Clark of system timing with two timing periods for acceptance, with each period for a different tier of workers. My review of the text of column 7, lines 57-67 in Clark, and Clark overall, is that it teaches one of ordinary skill in the art to filter to obtain qualified workers and to compose a report with a list of the qualified workers. **This, in my opinion leads one of ordinary skill away from a system which serves to a preferred tier of workers an electronic capability on the respective web pages of the one or more workers in this tier to transmit an electronic acceptance, and automatically assigns a position in direct response to receiving an electronic acceptance of the position from such a worker, without further decision-making. In my opinion, Clark teaches nothing about computer logic requiring automatic system assignment using a tiered timing, where an electronic acceptance can be received, and a position automatically assigned both during a specified period (to one tier set of workers) and after expiration of the specified period (if no acceptance had been received during the specified time period) to another tier set of workers that includes workers in the earlier tier.** This, in my opinion, was not obvious to one of ordinary skill in year 2000.

11. I also found no disclosure in Clark on hosting a separate web page for each of a plurality of workers, with each different respective worker web page associated with only

the respective worker. I also found no disclosure in Clark of serving an offer of a position on a separate web page of the respective employee.

12. **THE REFERENCE DONNELLY:** My review of the Office Action at page 3 indicates to me that the second reference relied on for teachings is Donnelly. The examiner cites Donnelly to make up for the deficiency of Clark of no assignment of a position in direct response to electronic receipt of an acceptance of the position from the worker. Donnelly is directed to a resource management system (RMS) with a database of employee skills and respective employee schedules. A calendar functionality is provided to determine employee availability to staff a particular project. The RMS system reviews the individual calendars of the employees that are determined to be qualified, and then assigns the positions to staff the project to the respective qualified employees that have open time on their respective calendars. I base this opinion on the Donnelly Summary of the Invention, the Abstract, and column 10, lines 22-39, column 12, line 63 – column 13, line 35, the text beginning at column 28, line 46, Fig. 53, and the citations to Donnelly in the Office Action. That the assignment is made by the project manager or his staff of employees for a project is shown and described in these citations.

13. The Office Action refers to column 13, lines 8-35 of Donnelly. In my opinion, this text reference in Donnelly teaches that the company assigns the project to the respective qualified employee (lines 16-17), and then updates in real time the employee's respective workbench calendar (lines 30-31). If the project is tentative, and if it is subsequently cancelled by the company, so that it is no longer available for assignment to anyone, then the respective calendars of the employees assigned by the company to the cancelled project are updated to cancel this project assignment on their respective calendars, and the employees are made available for other project assignments by other managers (column 13, lines 9-13, and column 18, lines 20-29). I saw no disclosure in Donnelly of, after a serving to one or more web pages of a preferred tier of workers with a capability to electronic accept, triggering an assignment in direct response to receiving an electronic acceptance from a worker in this tier, with no further decision-making.

14. In my opinion, following Donnelly's teachings of the company making the assignments for a project would lead one of ordinary skill in the art away from the claimed invention, as Donnelly teaches a company assignment of the positions without employee

acceptance, and further, making the assignments without timed availability with respect to at least two tiers of workers (e.g., the claimed preferred workers, and a second tier of workers comprising the other additional qualified workers and the preferred workers, with a functionality to provide the preferred worker tier with an exclusivity for a specified period of time), where additional workers in a second tier of workers are served with an electronic capability on the respective web pages of these workers to transmit an electronic acceptances after the lapse of a specified time period in response to one or more respective electronic requests by or for these additional workers. I had not seen this claimed timing configuration with multiple tiers in a substantially broad band Internet system in 2000 and don't see how one of ordinary skill would arrive at it.

15. **THE REFERENCE PINARD:** My review of the Office Action at pages 3-4 indicates that the third reference relied on for teachings is Pinard. The Office Action cites Figs. 4A, 6 and 8, and column 6, lines 14-20 and column 4, lines 29-40 of Pinard for disclosing to one of ordinary skill, the Clark deficiency of not serving individual worker web pages in response to one or more respective electronic requests by or for these preferred workers where the web page is configured for notifying the one or more preferred workers that the new position is now available for selection.

16. In my opinion, Pinard discloses a web page generator for an administrator to automatically create a web page directory, and allows an individual with network access to view the directory information in a web page format. I base my understanding of Pinard on at least the Abstract, the Summary of the Invention, column 3, line 55 – column 4, line 56, and the citations to Pinard in the Office Action.

17. I did see a disclosure in Pinard of web pages directed to individuals in a directory. I did not see a disclosure in Pinard about a web page with filtered open positions listed for which the person is qualified (the point of the citation of Pinard in the Office Action). I did not see a disclosure in Pinard of serving an electronic capability, in response to one or more respective electronic requests, on the respective one or more web pages of a tier of preferred workers to transmit an electronic acceptance, or after a specified time period, opening the position for electronic acceptance by additional workers in another tier of workers, to accept the position electronically. I did not see a disclosure in Pinard of **a system where receipt of an electronic acceptance from a worker automatically assigns the**

position to the accepting worker, directly and without further decision-making processing. I did not see a disclosure in Pinard about timed availability, by computer, of open positions to at least two tiers of worker web pages (e.g., the preferred workers, and the other additional workers and the preferred workers).

18. **THE MCGOVERN REFERENCE:** My review of the Office Action at pages 4-5 indicates that the fourth reference relied on for teachings is McGovern. The Office Action at pages 4-5 cites McGovern as disclosing tiered system timing, citing Figs. 3 and 8 and column 9, lines 18-26, and also citing Fig. 6, column 8, lines 14-26, and column 10, line 66 – column 11, line 18, column 3, lines 20-33 and column 9, lines 41-55 and column 11, lines 1-7.

19. In my opinion, McGovern discloses a method and apparatus for providing an interactive computer-driven employment recruiting service that enables an employer to advertise available positions on the Internet, directly receive resumes from prospective candidates, and efficiently organize and screen the received resumes. The method and apparatus further is capable of monitoring employment advertisements for a job seeker and automatically notifying the job seeker when a position for which the job seeker is suitable becomes available. The method and apparatus further enables a plurality of companies to advertise job positions at a single location accessible via the Internet by a job seeker, and enables the job seeker to communicate directly with a company via the Internet if the job seeker is interested in obtaining further information pertaining to an available position at that company. See the Abstract, the Summary of the Invention, and the citations to McGovern in the Office Action.

20. My understanding is that the system of claim 123 and the method of claim 132 require an operation of serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position, in response to one or more respective electronic requests, and automatically assigning to the first preferred worker to transmit an electronic acceptance during a specified period of time, and then in the context of timed availability, making the position available to another tier of workers to make an electronic acceptance, and serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position, where receipt of an electronic acceptance will cause assignment of

the position to one of the workers in this second tier that includes the preferred workers, if no preferred worker accepts during the specified time period.

21. I found no teaching in McGovern of serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position, or serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position. I found no teaching in McGovern of automatically assigning by computer a position based on the trigger event of receipt of an electronic acceptance from a worker listed in the database of the claim for a given tier. Rather, my understanding is that Fig. 6 of McGovern, cited in the Office Action for teaching tiered timing, is a tool bar for a company administrator, the “hiring contact,” to add new positions to the website. I base my understanding on column 8, lines 14-26 of McGovern, which explains that the company administrator can manually add open positions and can manually delete positions using the tool bar. McGovern notes that the position may only be open for a certain period of time after which the position is not available to anyone. I base this on my understanding of column 9, lines 41-55. At column 10, line 66 – column 11, line 18, McGovern discusses manual deletion, but adds the feature of automatic deletion, based on previously entered position expiration dates provided by the company hiring contact, after which the position cannot be assigned to anyone. I base this on my understanding of column 10, line 66 – column 11, line 18.

22. In my opinion, based on these teachings, McGovern **teaches one or ordinary skill in the art in year 2000 away** from this claimed invention. When McGovern **deactivates** the position in column 11, lines 1-18, McGovern deactivates the position for **all** job applicants. Thus, **McGovern**, with this disclosed deactivation operation for the position, **does exactly the opposite** of assigning the new open position to a worker in this second tier of workers on receipt of an electronic acceptance from a worker in this second tier after the specified time period has lapsed. McGovern suggests nothing about setting up at least two tiers of applicants (e.g., a preferred set of workers, and other additional qualified workers and preferred workers). Rather, McGovern does the opposite, by deactivating the position for all workers, after the time period has lapsed.

23. My understanding of claim 123 is that it includes a number of operations for setting a context for the method and system. The claimed context requires the initial operations of **“obtaining information about a new open position,”** coupled with the

operation of “obtaining information about one or more of the workers that are preferred (“a preferred worker”) for the new open position,” coupled with the operation of “filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified.” Thus, workers are grouped in at least two tiers: preferred workers, and qualified workers and preferred workers. The features in claim 123 that I did not see taught or suggested in this prior art combination of the Office Action, and particularly for the claim as a whole in the claimed operation context, are:

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance by at least serving information about the new open position to each of the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to the one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

[No reference discloses automatically assigning to only one tier of workers during a specified time period, coupled with the following operations.]

the one or more computers configured for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective

workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

[The reference combination teaches away from this timed availability to a 2nd tier of worker (which may include the 1st tier) after a specified time has elapsed.]

the one or more computers configured for assigning the new open position, after the expiration of the specified time period, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

[The reference combination teaches away from this automatic assigning operation to one from this 2nd tier of workers after the specified time has elapsed upon receipt of an electronic acceptance from a worker in this second tier.]

24. The Office Action states that one of ordinary skill in the art would be motivated to modify the method of Clark, in view of Donnelly and Pinard to match employees to job qualifications via an individual web page, with the web page accessed by a potential employee as taught by McGovern.

25. **I found no articulated reasoning for a combination of features selected from Clark, from Donnelly, from Pinard, and from McGovern, by one of ordinary skill in the art at the time of the invention in August 2000. In my opinion, one of ordinary skill in the art would not ignore the teachings away from this combination in the cited prior art patents, to make the specific combination claimed in the specific way claimed.**

26. **I saw nothing in the references that teaches the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position. I saw nothing in the references that teaches that receipt of an electronic acceptance from a**

worker triggers an automatic assignment of the position without further decision-making. I saw nothing in the references that teaches a system that provides an exclusivity period by timing the system to serve an electronic capability on the web pages of the one or more preferred workers during a specified time period, and automatically assigning the position only on receipt of an electronic acceptance from a worker in the tier of one or more preferred workers during this “specified time period,” and then, after expiration of the specified time period, assigning the position automatically on receipt of an electronic acceptance received from a worker in this second tier of workers.

27. As per my discussion above, I found nothing in either Clark or Pinard or Donnelly or McGovern to explain or suggest or provide any form of roadmap on how or why one of ordinary skill would modify Clark (a system for selecting resumes or job openings for listing in a report—the antithesis of receiving an acceptance and triggering an automatic assignment in direct response), by using Donnelly (a system for automatically determining employee project availability and calendaring, and then selecting employees automatically for a given project—a system where employees are not given an electronic capability to accept—which was the point of the citation of Donnelly in the Office Action), using Pinard (a directory web page generator for an administrator—with individual web pages, but with no listing of open positions or an electronic capability to accept—which was the point of the citation of Pinard in the Office Action) with McGovern (a job search system—cited in the Office Action for disclosing timed tiering—where there is no second tier), to enable, in the manner claimed, a multi-tier timing system based on a set of preferred workers, and a second tier of workers comprising additional qualified workers and the preferred workers, and serving respective worker web pages with an electronic capability to make an electronic acceptance of the position to trigger an assignment.

28. **Conclusion:** Based on the above and based on my experience, it is my opinion that the system of claim 123 and the method of claim 132 were not obvious to one of ordinary skill in the art in August 2000, particularly in view of the teachings in these references that teach away from and fail to enable the claimed combination. The presence of the cited text in these references teaching away from the claimed combinations would not be ignored by the person of ordinary skill in the art and is a clear indicator to me that one of

ordinary skill in the art would not be motivated by the prior art in year 2000, to make the claimed combination.

29. I hereby declare that all statements made herein, unless otherwise indicated, are of my own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements can jeopardize the validity of any patent issuing from the captioned application or claiming the benefit of its priority.

Dated: May 18, 2010
Villanova, Pennsylvania

Signed by: 
EDMOND JOHN DOUGHERTY